Supreme Court, U.S.
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No. 97-482

In The

Supreme Court of the United States

October Term, 1997

GARY K. BEHRENS,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Court Of Appeal, First Circuit

BRIEF IN OPPOSITION

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I.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is a Louisiana state criminal prosecution brought against Gary Behrens (**Mr. Behrens**) for sexually molesting his then four year old daughter, Megan Behrens (**Megan**) on a single occasion between January 1, 1992 and April 17, 1992.

A jury returned a verdict of guilty as charged against Mr. Behrens for the single count of violation of La. R.S. 14:81.2 alleged in the bill of information filed against him. Mr. Behrens now contends that his conviction resulted from deprivation of his rights pursuant to section 1 of the 14th amendment to the United States Constitution.

However, although Mr. Behrens has attempted to couch his argument to this court in constitutional terms, his conviction, in reality, resulted from adverse credibility determinations made by the jury in a prosecution which was carried out with scrupulous regard for the very rights Mr. Behrens contends he was deprived of. Quite simply, the jury believed Megan and did not believe Mr. Behrens who elected to testify on his own behalf.

The sequence of events leading up to Mr. Behrens' arrest, prosecution and conviction are extensively set forth in the Louisiana First Circuit Court of Appeals opinion in this case. That opinion is reproduced as Appendix A to Mr. Behrens' Petition for Writ of Certiorari (**The Petition**). Accordingly, only those facts most germaine to the arguments raised in The Petition are discussed below.

B. FACTS PERTINENT TO THE OFFENSE

Megan is the younger of two daughters resulting from Mr. Behrens' marriage to his now ex-wife, Kathy Behrens (**Mrs. Behrens**). The record establishes that the dissolution of Mr. and Mrs. Behrens' marriage left them with a poor relationship. The record further establishes that Mr. Behrens had been previously charged with sexually molesting his older daughter. That charge resulted in a verdict of not guilty in his favor. The jury in this case was informed of the prior verdict.[1]

On April 17, 1992 Mrs. Behrens appeared at the St. Tammany Parish Louisiana Sheriff's Office (**STPSO**) in order to report an incident of sexual abuse of Megan by Mr. Behrens.

Mrs. Behrens spoke with officer Robert Cardinale (**Officer Cardinale**) of the STPSO. Officer Cardinale then interviewed Megan, in a separate room, for approximately one hour. This interview was not tape recorded nor was anyone else present when it occurred. Subsequently Officer Cardinale contacted the Office of Community Services (**OCS**) in order to set up an interview between Megan and that agency. According to Officer Cardinale it was very common for the STPSO and OCS to work together on cases involving child abuse.

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[1] Although Mr. Behrens has attempted to portray the trial of this matter as an oppressive and largely unconstitutional prosecution the record reflects, to the contrary, that his counsel was afforded a great deal of latitude in his presentation both at trial and in post-trial motions.

On April 20, 1992 Megan was interviewed by Officer Cardinale and Susan Vaught (**Ms. Vaught**) of OCS. A contemporaneous audio recording was made of Megan's April 20, 1992 interview.[2]

Subsequent to the April 20, 1992 interview Megan was examined by Dr. Joan Curtis (**Dr. Curtis**) a medical doctor practicing in the fields of Family Practice and Emergency Medicine with a sub-specialty in the medical examination of children for evidence of sexual abuse. Dr. Curtis' examination took place on April 27, 1992. Megan was accompanied to the examination by Mrs. Behrens and Ms. Vaught. Dr. Curtis spoke to Ms. Vaught concerning the case prior to speaking with Megan and her mother.[3]

Dr. Curtis' physical examination revealed that Megan had a 6 mm hymenal opening. This was contrasted with the normally expected 4 mm opening in a child of her age. Dr. Curtis also found that the posterior rim of the hymen appeared somewhat thickened and shortened. However, Dr. Curtis stated that these findings were **non-specific** because they could result from either sexual abuse or non-abuse pathologies such as severe infection, irritation from allergies or chicken pox. Dr. Curtis reviewed Megan's pediatric records and found that she had been treated only for an external yeast infection and

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[2] Megan's audio taped interview was made available to Mr. Behrens. His counsel played the entirety of the interview to the jury at trial.

[3] The substance of Dr. Curtis' discussion with Ms. Vaught was not disclosed to the jury at trial.

that Megan had the chicken pox. However, there was no notation in the pediatric records of any genital lesions.

Accordingly, Dr. Curtis characterized her findings as being in "Category 2" – consistent with either sexual abuse or non-abusive pathology.[4]

Dr. Curtis testified that in cases involving digital penetration (the type of abuse perpetrated on Megan) the majority of cases would yield no physical findings, however, in those digital penetration cases where physical findings exist she would expect them to be in Category 2.

In addition to taking Megan to be examined by Dr. Curtis Ms. Vaught interviewed a number of individuals in connection with her investigation. She also made arrangements to have Mrs. Behrens evaluated by a psychologist.[5]

Megan's account of her abuse by Mr. Behrens is detailed in the Appellate Court decision:

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[4] Dr. Curtis testified that she grades examination results in four categories. Category 1 represents a normal examination; Category 2 consists of findings which are both consistent with sexual abuse **and** non-abusive medical etiologies; Category 3 consists of highly suspicious findings (discharges associated with venereal disease, teethmarks, tears or scars in the hymen), and Category 4 consists of findings of definite evidence of sexual abuse including pregnancy or evidence of sperm.

[5] Although Ms. Vaught performed a significant investigation her trial testimony was extremely limited. She did not reveal the results of her investigation to the jury, nor did she testify as to any opinion which she may have formed concerning Mr. Behrens guilt or innocence. This point is more fully addressed below.

> "The victim testified that at the time of trial she was five years old and lived with her mother and her sister. She remembered visiting the defendant when he touched her bottom with his finger. She indicated that her bottom was the area between her legs. She thought that he was "[l]ooking for boogers" when he touched her bottom. The victim stated that the incident occurred during the day while she and the defendant were in the living room watching television and everyone else was outside. She was sitting on the couch and her father was standing beside her. Afterwards the defendant told her not to tell anyone. Another incident occurred when she and the defendant were in the backyard, and everyone else was inside the house, and the defendant again touched the place between her legs with his hand. He did not say anything to her. The victim subsequently told her mother because she "thought maybe she [could] do something about it". She told her mother that he did "something bad". The victim stated that she has two private parts which she calls her bottom. She indicated that one of her private parts was in the front of her body and one was in the back. She indicated that the defendant touched her front private and that no one else had touched her front private"[6]

The testimony of Officer Cardinale, Mrs. Behrens, Dr. Curtis, Ms. Vaught and Megan constituted the prosecution's case-in-chief at trial. Each of these witnesses was vigorously cross-examined by Mr. Behrens' counsel

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[6] See The Petition at App. 9.

although their testimony was obviously accepted by the jury notwithstanding that cross-examination.

C. THE TRIAL

1. THE CONDUCT OF THE PROSECUTION

Notwithstanding the allegations contained in The Petition Mr. Behrens' prosecution was conducted with scrupulous regard for his constitutional rights. This was true both during and subsequent to the trial. The following examples are illustrative of the steps taken to safeguard Mr. Behrens' rights and are directly pertinent to the allegations raised in The Petition:

1) Officer Cardinale prepared a resume report containing information obtained from Megan in her April 17, 1992 interview. Although this resume was not a part of Officer Cardinale's initial report (and therefore not discoverable pursuant to Louisiana law)[7] and the prosecution did not believe that it contained any exculpatory information within the meaning of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed 2d 215 (1963) or *Kyles v. Whitley*, ___ U.S. ___, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). It was nonetheless submitted to the trial judge for in camera inspection immediately prior to trial. The trial judge reviewed the resume report and agreed it did not contain any *Brady/Kyles* material;

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[7] See the Court of Appeals opinion at App. 21.

2) When Megan was being interviewed by the prosecution team during the trial, in preparation for her testimony, she made inconsistent statements to them. The prosecution immediately notified the trial judge and Mr. Behrens counsel of these inconsistencies.[8];

3) Subsequent to the trial the prosecution became aware of information which significantly impacted Ms. Vaught's credibility. The prosecution immediately notified the trial judge that this information had been obtained so that Mr. Behrens counsel could in turn be informed.

2. THE TRIAL EVIDENCE

In addition to the evidence presented by the state, as outlined above, the jury also heard testimony from Drs. Richard Cicinelli and Steven David Thurber, the former a psychiatrist and the latter a clinical and pediatric psychologist with a specialty in the investigation of child sexual abuse.[9]

Dr. Cicinelli testified that, Mrs. Behrens saw her ex-husband in an overwhelmingly bad light which might

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[8] This resulted in Mr. Behrens calling one of the prosecutors to testify before the jury concerning the inconsistencies in Megan's testimony.

[9] In addition to Drs. Cicinelli and Thurber the defense also presented several lay witnesses. Their testimony was entirely factual and is not urged by Mr. Behrens as being relevant to the issues this Court is being asked to decide.

Officer Cardinale was also recalled to testify as a defense witness. His testimony is discussed infra.

have possibly impacted the children. Dr. Thurber testified extensively concerning possible "contaminants" in Megan's April 20, 1992 interview such as coercion and leading questions and also noted the possibility of a "carryover" effect of the contaminated interview to subsequent interviews and evaluations of Megan.

Officer Cardinale was recalled to testify by Mr. Behrens. At that time Megan's entire recorded interview of April 20, 1992 was played for the jury. Thus, in addition to "expert" opinions concerning the manner in which Officer Cardinale and Ms. Vaught conducted their interview the jury had the benefit of hearing the entire proceeding including any voice inflections and pauses which it might determine to be relevant in deciding whether Megan was subjected to undue coercion and pressure in stating that her father had molested her.[10]

3. POST TRIAL PROCEEDINGS

As noted above, subsequent to trial the prosecution became aware of information significantly impacting Ms. Vaught's credibility. This information was brought to the attention of the trial judge and was the subject of a Motion for a New Trial filed by Mr. Behrens. An evidentiary hearing was held at which time Mr. Behrens counsel was afforded ample opportunity to impeach Ms. Vaught's

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[10] Importantly, the jury also heard a member of the prosecution team testify concerning the inconsistent statements made to her during trial preparation. Mr. Behrens therefore had ample opportunity to impugn Megan's credibility during the presentation of his case.

credibility through the use of misrepresentations she had made concerning her academic qualifications. Additionally, Mr. Behrens was afforded the opportunity to show bias on Ms. Vaught's part as a result of her having been a victim of sexual abuse in her own past. The District Court and the Appellate Court both found the impairment of Ms. Vaught's credibility to be an insufficient basis for granting a new trial in these proceedings.

2. DISCUSSION

A. PREFACE

The federal questions raised by Mr. Behrens in his petition are not novel. Nor do they require this Court to clarify differing constitutional standards applied by inferior courts to the issues being raised. Rather, The Petition requires that this Court undertake a fact sensitive determination as to whether or not well settled principles of constitutional law have resulted in an abridgment of Mr. Behrens rights as a matter of fact. Accordingly, the emphasis in the State of Louisiana's discussion of the issues is on the facts of this case as they apply to fundamental principles of constitutional law primarily involving the *Brady/Kyles* requirement that exculpatory/favorable information in the possession of the state be disclosed to a criminal defendant.

B. MR. BEHRENS WAS NOT DEPRIVED OF *BRADY/KYLES* MATERIAL

It is beyond dispute that the suppression of evidence favorable to a criminal defendant by the prosecution

violates due process rights where the evidence is material to either guilt or punishment irrespective of the good or bad faith of the prosecution.[11] Evidence is considered to be favorable to an accused where it is either exculpatory or can be used to impeach prosecution witnesses.[12]

Favorable evidence is material and its suppression results in a constitutional error if there is a reasonable probability that had the evidence been disclosed to the defense the result of the proceeding would have been different.[13]

Mr. Behrens primary argument with respect to *Brady/ Kyles* is that disclosure of Officer Cardinale's resume report would have made a different outcome to Mr. Behrens trial reasonably probable. This argument is based on two primary premises: (1) the resume could have been used to impeach both Officer Cardinale and Megan and (2) the resume would have provided a "competing explanation" for Megan's assertion that Mr. Behrens molested her.

The impeachment argument is grounded in the following colloquy between Officer Cardinale and defense counsel at trial:

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[11] *Brady*, supra at 373 U.S. 87, 83 S. Ct. 1196-97; 10 L. Ed. 2d 215. *Kyles v. Whitley*, supra at 115 S. Ct., 1565, 131 L. Ed. 2d 490.

[12] *United States v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985).

[13] *Bagley*, supra at 473 U.S. 682 and 685, 105 S. Ct. at 3383 and 3385. A criminal defendant need only show that disclosure of the suppressed evidence to competent counsel would have made a different result reasonably probable. *Kyles*, supra at 115 S. Ct. 1569.

". . .

Q. Did she tell you on April 17 that her dad had touched you (sic) on her back private part?

A. No sir, she did not.

Q. Did she tell you that her dad had touched her on her front private part on April 17?

A. Yes sir.

. . . "[14]

Officer Cardinale's resume report in turn states the following with respect to the April 17, 1992 interview:

"Detective asked Megan why she was scared of her daddy, and she said that her daddy **spanks** her on the private. Detective asked Megan where was her private and she pointed to her buttock."[15]

The first question which must be resolved is whether the statements are contradictory and hence would constitute "impeachment". Mr. Behrens assertion that Officer Cardinale's trial testimony and the resume are contradictory/false paints with a broad brush. The Court is encouraged to review Officer Cardinale's testimony in its entirety bearing in mind that Mr. Behrens was charged with sexual **not** physical abuse. There is a distinct difference between "touching" in a sexual context and spanking as an act of correction. To say that the result of Mr. Behrens' trial would probably have been different had he

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[14] See The Petition at p. 17.

[15] Emphasis added.

been able to use the resume to "impeach" Officer Cardinale's testimony is specious. Given the circumstances of this case it is probable that Officer Cardinale would have simply called Mr. Behrens' counsel's attention to the logical distinction between sexual "touching" and spanking.[16]

Mr. Behrens also asserts that Megan's fear of him resulting from his spanking her constituted a competing explanation for her allegation of sexual abuse. However, as the Appellate Court noted in affirming Mr. Behrens' conviction:

> "It does not appear that it would have changed the outcome of the trial if the defendant had presented the spanking statements as the victims reasons for bringing these charges, or if the inconsistent statement had been introduced since other inconsistencies in the victims testimony had been presented to the jury during the trial."[17]

Although Mr. Behrens asserts that the spankings Megan received would have constituted a "competing explanation" for her allegations of abuse this position is inconsistent with his assertion that had he been aware of

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[16] It is also important to note that the trial judge read the resume report immediately prior to the commencement of trial. Obviously, he did not believe that the resume contained *Brady/Kyles* material even after Officer Cardinale testified. Mr. Behrens argument is based entirely upon the characterization of Officer Cardinale's testimony as being "false" and further assumes that Officer Cardinale if confronted with the resume would not simply have called Mr. Behrens' counsel's attention to the logical distinction between sexual touching and spanking.

[17] See The Petition at App. 20.

Ms. Vaught's misrepresentations concerning her educational background:

> **" . . . Mr. Behrens would have been able to build his entire defense around Ms. Vaught's own victimization as the underlying reason for the allegations and would have been able to destroy her credibility in the presence of the jury."[18]**

It strains credulity to believe that the outcome of Mr. Behrens trial would have been different utilizing scattershot "competing explanations" so that each would have formed the fundamental basis for the defense. Plainly stated, if Mr. Behrens' spankings were the reason for Megan's allegations of abuse, Ms. Vaught's problems would have been irrelevant as they would not have been a reason for them. Conversely, if Ms. Vaught's misrepresentations and "victimization" would have formed the basis for the defense then the spankings would have been irrelevant. The fact that Mr. Behrens contends that each argument would probably have resulted in a different verdict belies the strength of both.

There is no doubt however that Ms. Vaught did make misrepresentations concerning her background at trial. There is further no doubt that to some extent her testimony would have been impeached had Mr. Behrens' counsel been aware of these misrepresentations at the time. The question which this Court must decide is the impact this impeachment would have had on the verdict. The best way to gage that impact appears to be to review the evidence disregarding every assertion of fact which

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[18] The Petition at p. 22. Emphasis added.

Ms. Vaught made during her testimony. In other words, assuming that Mr. Behrens was able to impeach Ms. Vaught to the extent that the jury disbelieved everything she said would the outcome of the trial probably have been different? The answer is clearly no. Ms. Vaught's participation in the trial was minimal. The primary purpose for her testimony was to serve as a road map for the investigation which was conducted by the STPSO and OCS. The record reveals that the prosecution was careful to insure that Ms. Vaught did not render an opinion as to the validity of the allegations nor did she testify concerning any other witnesses assertions or opinions.

Ms. Vaught's role in the interview with Megan was contemporaneously recorded and played for the jury at Mr. Behrens' behest. Therefore rather than having to rely on Ms. Vaught's credibility concerning the manner in which the April 20, 1992 interview was conducted the jury had the opportunity to hear it as it occurred. Her credibility was therefore rendered irrelevant. The questions she asked were heard by the jury, the responses Megan gave were heard by the jury. No amount of impeachment at trial could alter the jurors perception of what occurred because they heard it. As the Appellate Court noted:

"The evidence regarding Vaught was insufficient to change the outcome of the trial as Vaught's role in the trial was minimal."[19]

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[19] See The Petition at App. 36.

C. CONTAMINATION OF THE INTERVIEW

Mr. Behrens relies on Dr. Thurber's testimony concerning contamination of the interview with Megan to support his petition to this Court. The federal question raised by Dr. Thurber's testimony is unclear.[20] However, the question of "contamination" of the April 20, 1994 interview was raised at trial and Mr. Behrens had the opportunity to fully address that issue before the jury. As the Court of Appeal noted in affirming Mr. Behrens conviction:

> " . . . Thurber was qualified as an expert in clinical and pediatric psychology and child development with a special emphasis on the investigation of child sex abuse. After explaining several means by which an interview can be contaminated, Thurber testified that he had reviewed the victim's tape-recorded interview and felt that there were a number of contaminants in the interview. He pointed out some specific instances of contamination. He also indicated that, when an interview is contaminated, there is a possibility of a carryover effect from the contaminated interview to subsequent interviews, evaluation and investigations."[21]

The Court of Appeals found **no merit** in Mr. Behrens' argument that the Trial Court's limitations on Dr. Thurber's testimony prejudiced his defense. Nor does that

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[20] The Petition at pp. 9-11 details the federal questions it raises. Dr. Thurber is mentioned only at p. 10e. However this is in the context of the resume and **not** in the context of a constitutional issue raised by Dr. Thurber's opinions per se.

[21] See The Petition at App. 28.

issue appear to have been raised in The Petition.[22] However, out of an abundance of caution, it should be noted that the Court of Appeal found based upon the record that:

> "The record shows that, in addition to discussing the contaminants contained in the interview of the victim, Thurber did testify regarding the possible carryover effect from a contaminated interview to subsequent interviews, evaluations, and investigations. We see no significant difference in this testimony and the testimony which the defendant claims should have been allowed. Any difference had little effect on the overall probative value of Thurber's testimony."[23]

D. THE EXCLUSION OF TESTIMONY CONCERNING ANNULMENT OF MRS. BEHRENS MARRIAGE DID NOT VIOLATE MR. BEHRENS RIGHT TO CONFRONTATION

Mr. Behrens argues that the Trial Court's allowing Mrs. Behrens to exercise a testimonial privilege with respect to steps she had taken to have her marriage annulled, in the Catholic faith, denied him his right to effectively confront her.

The testimonial privilege at issue was found in the former La. R.S. 15:477 (at the time the communications were made) and was found in La. C.E. Art. 511 at the time of trial.

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[22] See The Petition at p. 20C1. and 2.

[23] See The Petition at App. 29 and 30.

Mr. Behrens subpoenaed the records of the annulment procedure from the Archdiocese of New Orleans. The Archdiocese filed a Motion to Quash the subpoena which was **denied** by the Trial Court. The records were made available for Mr. Behrens' counsel's review.

However, when Mrs. Behrens was questioned, outside the presence of the jury, concerning the annulment procedure she advised the Trial Court that she wished to exercise her testimonial privilege.

Mr. Behrens argues that:

> "By the very nature of her request, Ms. Behrens was well aware of that any communication made by her to The Archdiocese would be disclosed to the Metropolitan Tribunal in connection with his participation in the this investigation of the factual basis of such requests, its evaluations of such requests and its decisions rendered in connection with such requests."[24]

However, pretermitting the fact that **no evidence** was placed in the record concerning the functions of the Metropolitan Tribunal it seems clear that **Mrs. Behrens** was entitled to maintain the confidentiality of her communications to The Archdiocese **and** to have that confidentiality respected by it. There is absolutely no evidence in **the record** that Mrs. Behrens' communications to The Archdiocese/Metropolitan Tribunal would have been divulged to a third party. Such evidence would clearly be necessary in order to raise even the inference that she had

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[24] See The Petition at p. 25.

no expectation of privacy concerning those communications.

Additionally, assuming arguendo that such evidence would have been admitted to it is impossible to say that it probably would have affected the outcome of the trial.

Presumably such evidence would have been yet another "centerpiece" of Mr. Behrens' defense, in addition to (1) Impeachment of Officer Cardinale (2) Ms. Vaught's bias and (3) the "spanking explanation". However, given the testimony of Mr. Behrens, Mrs. Behrens and Dr. Cicinelli it is difficult to see how this evidence would have added **anything** to Mr. Behrens' defense.

3. CONCLUSION

Mr. Behrens' arguments are unpersuasive. They are neither born out by the facts nor persuasive under the law. For example, he strongly implies prosecutorial misconduct or, at the least, a reckless disregard for his constitutional rights by the prosecution team. However, there is no satisfactory explanation given for why the prosecution would divulge inconsistent statements made by Megan to it, in a setting where **no one** ever would have been aware of them, yet intentionally or recklessly failed to divulge vote statements which had previously been made the subject, at its behest, of an in-camera inspection by the Court.[25]

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[25] The state does not imply that it should be entitled to any "extra credit" for doing what it was legally and morally obligated to do. Rather, it simply seeks to demonstrate that Mr. Behrens is engaged in a good bit of hyperbole in the use of such

Both Louisiana Courts which heard this matter arrived at the correct conclusion that the resume report did not rise to the level of *Brady/Kyles* material.[26]

It is interesting to note that having discovered the resume, Mr. Behrens never subpoenaed Megan to testify in connection with his Motion for New Trial. If the "spanking explanation" would have undermined Megan's credibility Mr. Behrens had ample opportunity to make a proffer of this evidence. Clearly, counsel was aware that he would have the opportunity to cross-examine witnesses, with respect to their credibility, on his Motion for New Trial as he did so with Ms. Vaught.

The deficiencies in Ms. Vaught's testimony, while regrettable, do not warrant any relief by this Court. While Ms. Vaught might have been effectively **impeached** by the use of the after-acquired information, her impeachment is not tantamount to substantive evidence in Mr. Behrens' favor. If the entirety of her testimony is put aside the results of Mr. Behrens' trial would have been

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phraseology as "Incredibly, counsel for the state failed to take appropriate remedial measures at the time . . . " (The Application at p. 17.)

[26] The Louisiana Supreme Court's denial of Writs has no precedential value. It is particularly important to note that the trial judge who had the benefit of not only reviewing the resume report **immediately before trial,** but also hearing all of the examination of Officer Cardinale, in context, **never** ordered disclosure of the resume. Further, an independent review by this Court should lead ineluctably to the same conclusion. The results of Mr. Behrens trial, quite simply, would not probably have been different, with the disclosure of the resume.

the same. Accordingly, her credibility could not have affected the outcome of the trial.

Mr. Behrens' argument concerning the clergyman/penitent privilege is also without merit. Even assuming that there was evidence in the record concerning the nature and extent of the communications which would have been made to **Mr. Behrens** by The Archdiocese of New Orleans/Metropolitan Counsel and/or that the outcome of this case would have had a material effect on the annulment process (that it would not be granted in the absence of a criminal conviction) Mr. Behrens relationship with his wife was more than adequately explored at trial. A review of the totality of the record can leave little doubt the jury was more than adequately informed that Mr. and Mrs. Behrens did not enjoy a good relationship after the dissolution of their marriage. Further, it is impossible to say that the "shotgun" approach of simultaneously alleging that (1) Megan lied because her father spanked her; (2) Ms. Vaught put Megan up to the allegations because of her own history of sexual abuse and; (3) Mrs. Behrens put Megan up to it because of her desire to have her marriage annulled would have probably resulted in a different verdict.

Mr. Behrens' trial was conducted with more than adequate protection of his Fourteenth Amendment rights and this matter has been reviewed in detail by two separate Courts each of which found the verdict to be in conformity with the evidence. Accordingly, the State of Louisiana

respectfully requests that Mr. Behrens' Petition for a Writ of Certiorari to this Court be denied.

Respectfully submitted,

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